



US Army Corps
of Engineers
St Paul District

Public Notice

APPLICANT: General Public

ISSUED: 05 November 2004

EXPIRES: 05 December 2004

**REFER TO: CEMVP-CO-R (GP-
014-WI)**

**SECTION: 404 - Clean Water Act
10 - Rivers and Harbors Act of 1899**

1. The District Engineer of the U.S. Army Corps of Engineers, St. Paul District, proposes to re-issue GP-014-WI which authorizes the discharge of dredged or fill material into waters of the United States, including wetlands, for the purpose of carrying out the work specified below at established cranberry marsh operations in the State of Wisconsin. This proposal is in accordance with Title 33 Code of Federal Regulations 325.2(e)(2).

2. This general permit is within the purview of Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code 403) and Section 404 of the Clean Water Act (33 United States Code 1344).

3. The general permit program provides the District Engineer a means by which to authorize, after compliance with all required procedures, discharges of dredged or fill material into waters of the United States. General permits result in a reduced administrative burden on the Corps of Engineers and other reviewing agencies and provide a quicker service to the regulated public.

4. The general permit proposed to be re-issued would authorize discharges at established cranberry marsh operations where the total acreage of disturbance (including areas flooded for reservoir expansion) does not exceed 10 acres of waters of the U.S., including wetlands, for the following specified activities:

- Expansion of existing cranberry beds.
- "Squaring-off" existing cranberry beds.
- Construction of new cranberry beds adjacent to existing beds.
- Rehabilitation of abandoned beds (clearing, leveling, etc.)
- Construction of a dike for subdivision of an existing reservoir.
- Construction/extension of dikes for reservoir expansion.

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The cumulative total of 10 acres would be measured over the five-year period that this general permit would be valid. Loss of wetland functions and values would be offset by compensatory mitigation. Resources of special value or sensitivity, such as calcareous fens, trout lakes and streams, etc., are excluded from the general permit (See Special Condition #4 in attached draft).

5. During the past five years, this general permit has not been used. This was likely due to the decline in the market for cranberries that resulted in reduced expansion and improvement at marshes. However, Corps and WDNR staff believe it is a tool that should remain available as the industry has stabilized and modest improvements and additions are being made at marshes throughout the state. During the previous 5 years, 1994-1999, GP-014-WI was used seventeen times to authorize fills that ranged from 0.3 acre to 7.93 acres. Average per/project impact and average per/project compensatory mitigation were both 4.2 acres.

6. The purpose of this public notice is to solicit comments from all interested parties so that a General Permit can be issued which contains all necessary conditions to sufficiently minimize adverse impacts to the environment and yet provide a meaningful regulatory mechanism for the public. A draft permit is attached; it contains no changes from the existing GP-014-WI. Please note that Special Condition 4 lists waters where the general permit would not be applicable. Anyone wishing to receive a detailed listing of those waters may contact the St. Paul District at the address or telephone number below. This public notice and the draft general permit may also be viewed on the District Internet World Wide Web site at:
<http://www.mvp.usace.army.mil/regulatory>

7. **WATER QUALITY CERTIFICATION.** The State of Wisconsin, Department of Natural Resources, has evaluated this proposal for water quality certification pursuant to Section 401 of the Clean Water Act and Chapter NR 299, Wis. Adm. Code. The Department has determined that this general permit would result in discharges to waters of the state and that there is reasonable assurance that the activities covered will be conducted in a manner which does not violate the standards enumerated in Section NR 299.04, Wis. Adm. Code. Certification is granted provided the following conditions are complied with:

Applicants shall notify the Wisconsin Department of Natural Resources of their intent to start the discharge at least five business days prior to the beginning of the discharge.

Within 5 business days after the completion of the discharge, applicants shall notify the Wisconsin Department of Natural Resources of the completion of the discharge.

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Applicants shall allow the Wisconsin Department of Natural Resources reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.

Applicants are hereby advised that their project may require additional authorization under requirements of state law administered by the Department which are not related to water quality.

Notice of Appeal Rights. Any person whose substantial interest may be affected by the Department's determination may request a contested case hearing by serving a petition for hearing on the Secretary of the Department within 30 days after publication.

This determination shall become final in accordance with the provisions of NR 299.05(7), Wis. Adm. Code. The final decision of the Department shall be judicially reviewable as provided under ch. 227, Wis. Stats.

For judicial review you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and serve the petition on the Department. The petition shall name the Department as the respondent.

8. REPLIES/COMMENTS. Interested parties or agencies are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice.

Replies may be addressed to:

U.S. Army Corps of Engineers
St. Paul District
Attention: Regulatory Branch
190 Fifth Street, East
St. Paul, Minnesota 55101-1638

Or, if you have questions about the general permit, call Marita Valencia in the St. Paul District Office at (651) 290-5364.

9. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT. This proposal is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the proposed general permit.

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10. HISTORICAL/ARCHAEOLOGICAL. This public notice is being sent to the National Park Service, the State Archaeologist, and the State Historic Preservation Officer to determine if there are cultural resources which may be affected by activities authorized by the proposed general permit.

11. PUBLIC HEARING REQUESTS. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this general permit. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

12. PUBLIC INTEREST REVIEW. The decision whether to issue a general permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the St. Paul District Office.

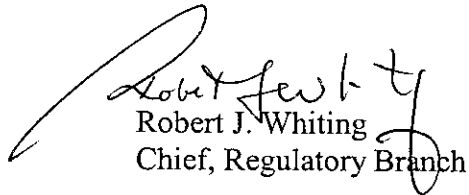
The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed general permit. Any comments received will be considered by the Corps of Engineers to determine whether to re-issue this general permit. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposal.

13. WISCONSIN COASTAL MANAGEMENT PROGRAM (WCMP). The WCMP in the Dept. of Administration is inviting public comment regarding this project. The WCMP may be

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conducting a Federal consistency review to verify that the proposal will comply with State policies in Wisconsin's coastal zone. Further information may be obtained from the Federal Consistency Coordinator at: Wisconsin Coastal Management Program, PO Box 7868, Madison, WI 53707-7868; (608) 266-8269. Any comments on whether or not this proposed project complies with the State enforceable policies should be received within 30 days by the Federal Consistency Coordinator.



Robert J. Whiting
Chief, Regulatory Branch

Enclosure

NOTICE TO EDITORS: This public notice is provided as background information and is not a request or contract for publication.

DEPARTMENT OF THE ARMY PERMIT

Permittee: Cranberry Marsh Operations Established Prior to 30 June 1994.

Permit No.: GP-014-WI

Issuing Office: St. Paul District
U.S. Army Corps of Engineers

NOTE: The term 'you' and its derivatives, as used in this permit, means the permittee or any future transferee. The term 'this office' refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Work for the following specified activities:

1. Expansion of existing cranberry beds.
2. "Squaring-off" of existing cranberry beds.
3. Construction of new cranberry beds adjacent to existing beds.
4. Rehabilitation of abandoned beds (clearing, leveling, etc.) that does not fall under the 404(f) exemption of the Clean Water Act.
5. Construction of a dike for subdivision of an existing reservoir that does not fall under the 404(f) exemption of the Clean Water Act.
6. Construction/extension of dikes for reservoir expansion.

Project Location:

The project worksites are located in various waters of the United States within the State of Wisconsin, except those listed under Special Condition 4, below.

How to Apply:

A. Applicants must submit a completed joint application form to the Corps and to the Wisconsin Department of Natural Resources (WDNR) with additional pages, as needed, to include.

1. Description of existing operation: acreage of cranberry beds, area of reservoir, etc.
2. Water source and receiving water for the operation; reservoir capacity-, and percentage of water recycled in a typical year.
3. Top view drawing (scale no less than 1 inch = 1000 feet), of entire existing operation (beds, dikes, ditches, roads, reservoir), proposed work, and property boundaries. Please show direction of water flow.
4. Describe other alternatives that were considered. Explain why they were not chosen. Growers who own or operate more than one marsh must include information about the other site(s).
5. Amount and type of fill material to be discharged and location of borrow area.

6. Area and type of wetlands affected by the proposed work. If more than one type of wetlands is affected, give acres in each category.
7. Names and addresses of adjacent property owners.
8. Mitigation plan to offset wetland values and functions lost due to cranberry bed and dike construction:
 - a. Top view plans or maps of the mitigation area to scale (1 inch = 100 feet with 2-foot contours) and typical cross-sections of any ponds, excavated areas, or diked areas. Describe existing vegetation.
 - b. State to within one-tenth of an acre the area of upland proposed to be converted to wetlands the area of degraded wetlands to be restored, and/or the amount of existing wetland that would be enhanced.
 - c. Information on any plantings or management practices proposed to improve water quality functions or wildlife habitat at the mitigation site.
 - d. State what wetland functions and values are goals of the restoration, enhancement or creation.
 - e. Plans for long-term management/ownership and 5-year monitoring plan of the mitigation area.
- B. *Complete the following section only if creation or change in design/capacity of reservoir is proposed.*
 1. A map showing the area that would be flooded in relation to adjoining property lines (1 inch = 100 feet with 2-foot contours).
 2. Type and amount of material to be used to construct the dam.
 3. Control structure, type and size.
 4. Description of emergency spillway.
 5. Existing and proposed water depth in wetlands to be flooded (percent area at different depths); reservoir sideslopes. Illustrate with cross-sectional drawings if depth varies.
 6. Nearest existing dams upstream and downstream from the site.
 7. Description of benchmark to which elevations of dam and water levels have been referred.

Water Quality Certification - Compliance With State Water Quality Standards: (section 401 of the Clean Water Act and Chapter NR 103, Wisconsin Administrative Code):

Within 60 days of receipt of the information listed above, WDNR will notify the applicant and the Corps whether the project meets Section 401 state water quality standards. WDNR will determine if:

- A. there are no practicable alternatives to the project as proposed;
- B. the project will not result in significant adverse impacts to wetland functions and values, and;
- C. the proposed project complies with state water quality certification requirements.

NOTE: if additional information is needed, or if heavy snow or ice cover at the site prevents WDNR from completing its review, the 60 day time limit may be extended.

The U.S. Environmental Protection Agency has denied Section 401 Water Quality Certification for utilization of this general permit on Indian Reservations within the State of Wisconsin.

Coordination With Other Agencies:

Within five days of receipt of a completed application, the Corps will forward a copy of the application materials to the U.S. Environmental Protection Agency, Region 5, Chicago (EPA); the U.S. Fish and Wildlife Service, Green Bay Field Office (FWS); the National Park Service, St. Croix National Scenic Riverway, and to the Wisconsin State Historic Preservation Officer (SHPO). Each will have 30 days within which to provide comments in accordance with coordination agreements signed between the Corps and each agency.

Within five days of receipt of a completed application, a copy of the application materials will be provided to the Bureau of Indian Affairs, Ashland Office (BIA); the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).

Further, to ensure that tribes receive actual notice of each activity proposed for authorization under GP-014-WI, the Corps will send a copy of the application materials to each tribe within the State of Wisconsin. The tribes will have 30 days from the date the application is sent to them to review the proposed cranberry development and submit to the Corps any comments concerning the effect of the project on tribal resources.

Permit Conditions:

A. General Conditions:

1. This general permit expires on December 31, 2009. The time limit for completing the work authorized ends three years from the date of your confirmation letter. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 30 days prior to that date.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may request to make a good faith transfer to a third party by submitting a written request to this office. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
4. You must allow representatives from this office and WDNR to inspect the authorized activity at any time during normal business hours to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
5. Construction practices shall include appropriate measures to minimize erosion, sedimentation, and turbidity, including, but not limited to: stabilization of exposed soils; mulching, use of filter fabric fencing; diversion berms and bales; settling basins; and riprapping of steep slopes.
6. Construction may not occur during fish spawning periods or at times when fish nursery sites would be adversely impacted. You must contact the WDNR Water Management Specialist for a determination.
7. This permit is not valid unless you have obtained all other required permits or approvals from other LOCAL, STATE, and FEDERAL jurisdictions.

B. Special Conditions:

1. This general permit applies only to established cranberry operations, with each operation considered a

separate site. An operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.

2. Total acreage of disturbance (including areas flooded by reservoir expansion) shall not exceed 10 acres of waters of the U.S., including wetlands.
3. The cumulative total of 10 acres will be measured over the 5-year period that this general permit is valid and includes any acreage disturbed under any nationwide general permit or any authorization issued by the St Paul District to replace nationwide general permits, such as GP/LOP-WI, during the same time period.
4. This general permit does not authorize any work in the following waters of the U.S.:
 - a. Calcareous fens.
 - b. Waters of the U.S. within the Natural and Scientific Areas.
 - c. Class 1, 11 and III trout streams identified in WDNR publication 6-3600(80) titled Wisconsin Trout Streams, including wetlands within 1,000 feet of the centerline of the stream.
 - d. Trout lakes, including wetlands within 1,000 feet of the lake's edge.
 - e. State or Federal Wild and Scenic Rivers, including wetlands within 1,000 feet of the ordinary high watermark (OHWM) of the river.
 - f. Wetlands and other waters of the U.S. located within 1,000 feet of FWS refuges and waterfowl production areas.
5. If a project would impact waters or wetlands adjacent to waters listed as impaired on the approved Wisconsin 303(d) list, the Corps will consult with EPA about special concerns and/or precautions that are applicable at that site.
6. Reservoir dikes and embankments shall have side slopes 3H: 1V or flatter.
7. Excess excavated material not used for construction shall be removed to an upland site, and not stockpiled in waters or wetlands.
8. The authorized work will not result in a net loss of wetland acreage. Compensatory mitigation will be used to offset losses.

The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine that the compensatory mitigation has not been fully satisfactory. Remedial work may include, but is not limited to, regrading and/or replanting of the mitigation site. This responsibility shall extend for a period of five years beginning upon the completion of the mitigation work. If remedial work is necessary, the five-year monitoring requirement would start with completion of this remediation.
9. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
10. No activity is authorized under the general permit that is likely to adversely affect a federally-listed threatened or endangered species, or a species proposed for such designation, as identified under the Endangered Species Act (ESA) of 1973, as amended; or, which is likely to result in the destruction or adverse modification of critical habitat for such species; or, which would result in a "take of any listed species of fish or wildlife; or, which would result in any other violation of Section 9 of the ESA, including those provisions that protect listed species of plants.
11. No activity or its operation authorized under the general permit may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing, hunting, and gathering rights.

12. This general permit does not authorize any activities other than those listed under Project Description, above; the discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas is not authorized.

13. The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP-014-WI based on concern for the aquatic environment for any other public interest factor.

Further Information:

A. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (x) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

B. Limits of this Authorization.

1. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
2. This permit does not grant any property rights or exclusive privileges.
3. This permit does not authorize any injury to the property or rights of others.
4. This permit does not authorize interference with any existing or proposed Federal project.

C. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damage claims associated with any future modification, suspension, or revocation of this permit.

D. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest relies on the information you provided.

E. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.

2. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See D, above).
3. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

F. Extensions. General condition I establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

MICHAEL F. PFENNING
Colonel, Corps of Engineers
District Engineer

(DATE)

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
SIBLEY SQUARE AT MEARS PARK
190 5TH ST. EAST
ST. PAUL, MINNESOTA 55101-1638

OFFICIAL BUSINESS
REGULATORY BRANCH
CO-R

POSTMASTER: Please Post Until Notice Expires